

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-136297-07

Date:

November 23, 2007

TY:

Taxpayer =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Country Y =

Company A =

Company B =

CPA 1 =

Accounting Firm =

Dear :

This is in response to a letter received by our office on August 10, 2007, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §301.9100-3 to make the election provided by IRC section 953(d) to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year 1 taxable year.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Taxpayer is incorporated under the laws of Country Y on Date 1 and is licensed as a Class "B" General Insurer to carry on general foreign insurance business. Since its inception, Taxpayer has only issued medical malpractice policies insuring the employees of Company A. Also since its inception, Taxpayer has retained the service of Company B to consult on its' operations and business activities.

Taxpayer requested Company B to recommend and retain a Certified Public Accountant for tax return preparation and overall tax advice as it pertains to Taxpayer's business. Based on the needs of Taxpayer, Company B recommended CPA 1. On Date 2, Taxpayer signed an engagement letter retaining the service of CPA 1 to prepare its Year 1 U.S. income tax return.

Taxpayer's Year 1 U.S. income tax return was to be filed by Date 3. Knowing that the return was not going to be filed timely, CPA 1 advised Taxpayer that an IRS Form 7004, An Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Income Tax Returns, should be filed. Accordingly, CPA 1 informed Taxpayer that he filed the form on Date 3.

Thereafter, CPA 1 requested from Taxpayer information necessary to prepare its Year 1 U.S. income tax return due on Date 4. However, for reasons unbeknownst to Taxpayer, CPA 1 resigned 3 days before Date 4 without completing Taxpayer's Year 1 U.S. income tax return. Immediately, Taxpayer retained Accounting Firm to prepare its Year 1 U.S. income tax return with an IRC section 953(d) election statement attached, and filed it with the IRS on Date 4.

On Date 5, Taxpayer received a letter from an IRS Revenue Officer rejecting the IRC section 953(d) election because it was not filed on or before the due date of his Year 1 U.S. income tax return, including extensions. IRS could not find and had no record of an extension filed for Taxpayer's Year 1 U.S. income tax return. Thereafter, Taxpayer requested from CPA 1 a copy of his Year 1 Form 7004 as well as proof that CPA 1 filed the form. As of the date of this ruling request, CPA 1 has not been able to provide proof that Taxpayer's Year 1 U.S. income tax return extension was filed.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the IRC, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. §301.9100-3(b)(1) provides that except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if it meets one of the conditions described in Treas. Reg. §301.9100-3(b)(1)(i) through (v). One such condition is that the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election. Treas. Reg. §301.9100-3(b)(1)(v).

Treas. Reg. §301.9100-3(c)(1) provides that a relief will be granted only when the interests of the Government will not be prejudiced.

Rev. Proc. 2003-47, 2003-2 C.B. 55, 56 provides that the election to be treated as a domestic corporation under IRC section 953(d), to be effective for a taxable year, must be filed by the due date prescribed in IRC section 6072(b) (with extensions) for the United States income tax return that is due if the election becomes effective.

In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under IRC section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. §301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Based on the facts and information submitted, including affidavits, we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by IRC section 953(d) in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year 1 taxable year.

The granting of an extension of time is not a determination that the Taxpayer is otherwise eligible to make the IRC section 953(d) election. Treas. Reg. §301.9100-1(a).

The Taxpayer should attach a copy of this letter ruling to its federal income tax return for the relevant year.

This ruling is directed only to the Taxpayer who requested it. IRC section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to the Taxpayer's authorized representative.

Sincerely,

Phyllis E. Marcus
Branch Chief
International, Branch 2
Office of Chief Counsel

cc: